

REMARKS**Response to Restriction Requirement Under 37 C.F.R. § 1.143**

The following is a response to the restriction requirement set out in the Office Action dated December 3, 2008, in which the pending claims 34 to 50 were restricted.

Applicants provisionally elect Invention IV, comprised of claims 40, 42, 43 and 49, with traverse. Claims 35 and 36 were indicated as being examined with any elected group. Claims 34, 41 and 46 were identified as linking claims. Claims 34, 41 and 46 have been amended to include the limitations of previously presented claim 45 (claim 45 has been canceled). It is believed that amended claims 34, 41 and 46 constitute linking claims. Accordingly it is believed that at least claims 34, 35, 36, 40, 41, 42, 43, 46 and 49 should be examined.

MPEP § 803 states that two criteria for proper restriction of claims must be met: 1) The inventions must be independent or distinct as claimed AND 2) there must be a serious burden on the examiner if restriction is required. MPEP § 803 further states that “[i]f the search and examination of all the claims in an application can be made without serious burden, the examiner must examine them on the merits, even though they include claims to independent or distinct inventions.” According to MPEP § 806.03, “Where the claims of an application define the same essential characteristics of a single disclosed embodiment of an invention, restriction therebetween should never be required.” This is because the claims are different definitions of the same disclosed subject matter, varying in breadth or scope of definition. Included in the first step may be a finding of the presence of subcombinations disclosed as usable together, but such subcombinations must be shown to not overlap. MPEP § 806.05(d). Second, the examiner must explain why there would be serious burden on the examiner if restriction is not required.

While MPEP § 806.05(d) requires that distinct claims not be overlapping, the converse is not required. That is to say, there is no requirement that overlapping claims must be viewed to be the same as each other. It is perfectly logical to have at least two things that overlap in some ways but are different in other ways. For example, in the present case elected claim 40 sets forth a tool

according to claim 34 where the spring comprises “an unwound band section of said spring that is at least partly positioned in a seat or a groove of said push or pull rod”. Restricted claim 39 sets forth a tool according to claim 34 wherein “said spring is wound in said support”. Separately restricted claim 44 sets forth a tool according to claim 41 wherein the “first end of the spring is rotatably supported on the support”. Clearly these claims include overlapping subject matter such that examination of these claims presents no serious burden on the Examiner. As demonstrated by the example embodiment discussed above, in some aspects the scope of all of the claims overlap. However, that overlap does not preclude the fact that each claim also encompasses subject matter within its scope that is different than the subject matter encompassed by the other claims. Thus, it is reasonable to use multiple related claims to describe an invention, and there are no grounds for restricting such related overlapping claims into independent groups of inventions.

It is submitted that there is no serious burden on the Examiner in the present case, as the searches for claims 37, 38, 39, 40, 42, 43, 44, 49 and 50 will overlap to a great extent and there are common elements to all of the claims. Applicant reiterates that the instant invention is a straightforward mechanical device in a predictable art area. Applicant has provided claims for the device that describe different aspects of the invention, as required under 35 U.S.C. § 112. The claims have overlapping subject matter as explained above. Yet, the fact that they overlap does not mean that they are the same. The Examiner has failed to provide anything other than conclusory reasons for the restriction, especially with regard to exactly what features of the claims will make his search burden serious if the restriction is not upheld. It is submitted that the search for the different inventions will be very similar especially as the claims relate to the arrangement of the spring.

Reconsideration of the restriction requirement is requested.

If the Examiner has any questions about the present response, a telephone interview is requested. If necessary, please charge any additional fees or credit overpayment to Deposit Account No.

13-4365.

In summary it is submitted that, upon entry of the present amendment, all claims are allowable and that the application is in a condition for allowance.

If the Examiner has any questions about the present Amendment a telephone interview is requested.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 13-4365.

Respectfully submitted,

Manfred Geirer

(Applicant)

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By: 

Dennis J. Williamson
Registration No. 32,338
Attorney for Applicant
Moore & Van Allen, PLLC
P.O. Box 13706
Research Triangle Park, N.C. 27709
Phone: 919-286-8000
Facsimile: 919-286-8199